

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR-13-0753 EMC

Plaintiff,

v.

**ORDER RE COURT'S PROPOSED
JURY INSTRUCTIONS**

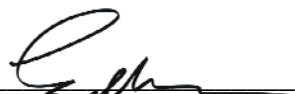
IVAN SPEED,

Defendant.

The parties submitted stipulations regarding jury instructions on April 22, 2014 (Docket No. 37). Defendant has objected to two instructions (Docket Nos. 37, 48). The Court has considered the views of the parties and proposes the following jury instructions. The parties are directed to file any objections by **5:00 p.m.**, May 29, 2014.

IT IS SO ORDERED.

Dated: May 27, 2014


EDWARD M. CHEN
United States District Judge

[PRELIMINARY INSTRUCTIONS]**JURY INSTRUCTION NO. 1****DUTY OF JURY**

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial I will give you more detailed written instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. Please do not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be – that is entirely up to you.

Comment: Ninth Circuit Model Jury Instruction 1.1.

JURY INSTRUCTION NO. 2**THE CHARGE – PRESUMPTION OF INNOCENCE**

This is a criminal case brought by the United States government. The government charges the defendant with distribution of a controlled substance near a school. The charge against the defendant is contained in the indictment. The indictment simply describes the charges the government brings against the defendant. The indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charge and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never have to prove innocence or to present any evidence.

Comment: Ninth Circuit Model Jury Instruction 1.2.

The Ninth Circuit Model Instructions provide that the Court may provide the jury a brief statement of the elements of the crime for which the Defendant is charged as part of this instruction. It is the practice of the Court to not provide the jury with a description of the elements prior to the presentation of evidence.

JURY INSTRUCTION NO. 3

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness; and
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

Comment: Ninth Circuit Model Jury Instruction 1.3.

JURY INSTRUCTION NO. 4

WHAT IS NOT EVIDENCE

The following things are *not* evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Comment: Ninth Circuit Model Jury Instruction 1.4.

JURY INSTRUCTION NO. 5

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Comment: Ninth Circuit Model Jury Instruction 1.5.

JURY INSTRUCTION NO. 6

RULING ON OBJECTIONS

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

Comment: Ninth Circuit Model Jury Instruction 1.6.

JURY INSTRUCTION NO. 7
CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Comment: Ninth Circuit Model Jury Instruction 1.7.

JURY INSTRUCTION NO. 8

CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen

1 to any news or media accounts or commentary about the case or
2 anything to do with it; do not do any research, such as consulting
3 dictionaries, searching the Internet or using other reference materials;
4 and do not make any investigation or in any other way try to learn
5 about the case on your own.
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7 The law requires these restrictions to ensure the parties have a fair trial based on the same
8 evidence that each party has had an opportunity to address. A juror who violates these restrictions
9 jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire
10 trial process to start over. If any juror is exposed to any outside information, please notify the court
11 immediately.
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13 Comment: Ninth Circuit Model Jury Instruction 1.8.
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JURY INSTRUCTION 9

NO TRANSCRIPT AVAILABLE TO JURY

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

Comment: Ninth Circuit Model Jury Instruction 1.9.

JURY INSTRUCTION NO. 10

TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you from being attentive. When you leave court for recesses, your notes should be left in the envelope in the jury room. No one will read your notes.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Comment: Ninth Circuit Model Jury Instruction 1.10.

JURY INSTRUCTION NO. 11

OUTLINE OF TRIAL

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The government will then present evidence and counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

Comment: Ninth Circuit Model Jury Instruction 1.11.

[INSTRUCTIONS IN THE COURSE OF TRIAL]**JURY INSTRUCTION NO. 12****CAUTIONARY INSTRUCTION – FIRST RECESS**

We are about to take our first break. Remember, until the trial is over, do not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else, and do not allow others to discuss the case with you. This includes discussing the case in Internet chat rooms or through Internet blogs, Internet bulletin boards, emails or text messaging. If anyone tries to communicate with you about the case, please let me know about it immediately. Do not read, watch, or listen to any news reports or other accounts about the trial or anyone associated with it, including any online information. Do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own. Finally, keep an open mind until all the evidence has been presented and you have heard the arguments of counsel, my instructions on the law, and the views of your fellow jurors.

If you need to speak with me about anything, simply give a signed note to my Courtroom Deputy Clerk Betty Lee to give to me.

Comment: Ninth Circuit Model Jury Instruction 2.1.

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JURY INSTRUCTION NO. 13
BENCH CONFERENCES AND RECESSES

From time to time during the trial, it may become necessary for me to take up legal matters with the attorneys privately, either by having a conference at the bench or, when necessary, by calling a recess.

We will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference.

Comment: Ninth Circuit Model Jury Instruction 2.2.

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JURY INSTRUCTION NO. 14

STIPULATED TESTIMONY (*if applicable*)

The parties have agreed what [name of witness]'s testimony would be if called as a witness.
You should consider that testimony in the same way as if it had been given here in court.

Comment: Ninth Circuit Model Jury Instruction 2.3.

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JURY INSTRUCTION NO. 15

STIPULATIONS OF FACT (*if applicable*)

The parties have agreed to certain facts that have been stated to you. You should therefore treat these facts as having been proved.

Comment: Ninth Circuit Model Jury Instruction 2.4.

JURY INSTRUCTION NO. 16

JUDICIAL NOTICE (*if applicable*)

The court has decided it is not necessary to receive evidence of the fact that [insert fact noticed] [because this fact is of such common knowledge]. You may, but are not required to, accept this fact as true.

Comment: Ninth Circuit Model Jury Instruction 2.5.

JURY INSTRUCTION NO. 17

TRANSCRIPT OF RECORDING IN ENGLISH *(if applicable)*

You are about to [hear] [watch] a recording that has been received in evidence. A transcript of the recording is being provided to help you identify speakers and to help you decide what the speakers say. Remember that the recording is the evidence, not the transcript. If you hear something different from what appears in the transcript, what you heard is controlling. Listen carefully; the transcript will not be available during your deliberations.

Comment: Ninth Circuit Model Jury Instruction 2.7.

JURY INSTRUCTION NO. 18

OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT *(if applicable)*

You are about to hear evidence that the defendant committed other [crimes] [wrongs] [acts] not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's [intent] [motive] [opportunity] [preparation] [plan] [knowledge] [identity] [absence of mistake] [absence of accident] and for no other purpose. [You may not consider this evidence as evidence of guilt of the crime for which the defendant is now on trial.]

Comment: Ninth Circuit Model Jury Instruction 2.10.

JURY INSTRUCTION NO. 19

EVIDENCE FOR LIMITED PURPOSE (*if applicable*)

You are about to hear evidence that [describe evidence to be received for limited purpose]. I instruct you that this evidence is admitted only for the limited purpose of [describe purpose] and, therefore, you must consider it only for that limited purpose and not for any other purpose.

Comment: Ninth Circuit Model Instruction 2.11.

JURY INSTRUCTION NO. 20**DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return – that is a matter entirely up to you.

Comment: Ninth Circuit Jury Instruction 3.1.

JURY INSTRUCTION NO. 21

CHARGE AGAINST DEFENDANT

NOT EVIDENCE – PRESUMPTION OF INNOCENCE – BURDEN OF PROOF

The indictment is not evidence. The defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

Comment: Ninth Circuit Model Jury Instruction 3.2.

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JURY INSTRUCTION NO. 22
DEFENDANT’S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

-OR-

JURY INSTRUCTION NO. 22
DEFENDANT’S DECISION TO TESTIFY

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

Comment: Ninth Circuit Model Jury Instructions 3.3 and 3.4.

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JURY INSTRUCTION NO. 23
REASONABLE DOUBT – DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Comment: Ninth Circuit Model Jury Instruction 3.5.

JURY INSTRUCTION NO. 24

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness; and
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.

Comment: Ninth Circuit Model Jury Instruction 3.6.

JURY INSTRUCTION NO. 25**WHAT IS NOT EVIDENCE**

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. [In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.]
3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Comment: Ninth Circuit Model Jury Instruction 3.7.

JURY INSTRUCTION NO. 26

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Comment: Ninth Circuit Model Jury Instruction 3.8.

JURY INSTRUCTION NO. 27
CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the witness's opportunity and ability to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case, if any;
5. the witness's bias or prejudice, if any;
6. whether other evidence contradicted the witness's testimony;
7. the reasonableness of the witness's testimony in light of all the evidence; and
8. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

Comment: Ninth Circuit Model Jury Instruction 3.9.

JURY INSTRUCTION NO. 28

ACTIVITIES NOT CHARGED

You are here only to determine whether the defendant is guilty or not guilty of the charge[s] in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

Comment: Ninth Circuit Model Jury Instruction 3.10.

JURY INSTRUCTION NO. 29

STATEMENTS BY DEFENDANT (*if applicable*)

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

Comment: Ninth Circuit Model Jury Instruction 4.1.

JURY INSTRUCTION NO. 30

OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT (*if applicable*)

You have heard evidence that the defendant committed other [crimes] [wrongs] [acts] not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's [intent] [motive] [opportunity] [preparation] [plan] [knowledge] [identity] [absence of mistake] [absence of accident] and for no other purpose. [You may not consider this evidence as evidence of guilt of the crime for which the defendant is now on trial.]

Comment: Ninth Circuit Model Jury Instruction 4.3.

JURY INSTRUCTION NO. 31

IMPEACHMENT, PRIOR CONVICTION OF DEFENDANT (*if applicable*)

You have heard evidence that the defendant has previously been convicted of a crime. You may consider that evidence only as it may affect the defendant's believability as a witness. You may not consider a prior conviction as evidence of guilt of the crime for which the defendant is now on trial.

Comment: Ninth Circuit Model Jury Instruction 4.6.

JURY INSTRUCTION NO. 32

IMPEACHMENT EVIDENCE -- WITNESS (*if applicable*)

You have heard evidence that [name of witness], a witness, [specify basis for impeachment].
You may consider this evidence in deciding whether or not to believe this witness and how much weight to give to the testimony of this witness.

Comment: Ninth Circuit Model Jury Instruction 4.8.

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JURY INSTRUCTION NO. 33
TESTIMONY OF WITNESSES
INVOLVING SPECIAL CIRCUMSTANCES – BENEFITS

You have heard testimony from James Gibbs, a witness who received compensation from the government in connection with this case.

For this reason, in evaluating the testimony of James Gibbs, you should consider the extent to which or whether his testimony may have been influenced by this factor. In addition, you should examine the testimony of James Gibbs with greater caution than that of other witnesses.

Comment: Ninth Circuit Model Jury Instruction 4.9.

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JURY INSTRUCTION NO. 34
GOVERNMENT’S USE OF UNDERCOVER INFORMANT

You have heard testimony from James Gibbs an informant who was involved in the government’s investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of informants and undercover agents, in order to investigate criminal activities. Undercover agents and informants may use false names and appearances and assume the roles of members in criminal organizations.

Comment: Ninth Circuit Model Jury Instruction 4.10.

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JURY INSTRUCTION NO. 35
OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Comment: Ninth Circuit Model Jury Instruction 4.14.

JURY INSTRUCTION NO. 36

SUMMARIES NOT RECEIVED IN EVIDENCE (*if applicable*)

During the trial, certain charts and summaries were shown to you in order to help explain the evidence in the case. These charts and summaries were not admitted in evidence and will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

Comment: Ninth Circuit Model Jury Instruction 4.15.

JURY INSTRUCTION NO. 37

CHARTS AND SUMMARIES IN EVIDENCE (*if applicable*)

Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

Comment: Ninth Circuit Model Jury Instruction 4.16.

JURY INSTRUCTION NO. 38

KNOWINGLY – DEFINED

An act is done knowingly if the defendant is aware of the act and does not [act] [fail to act] through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

Comment: Ninth Circuit Model Jury Instruction 5.6.

JURY INSTRUCTION NO. 39
CONTROLLED SUBSTANCE – DISTRIBUTION IN OR
NEAR SCHOOL (21 U.S.C. §§ 841(a)(1) and 860)

The defendant is charged in the indictment with distribution of cocaine base in the form of crack cocaine in, on or within 1,000 feet of the property of San Francisco City Academy in violation of Sections 841(a)(1) and 860 of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly distributed cocaine base in the form of crack cocaine to another person;

Second, the defendant knew that it was cocaine base in the form of crack cocaine or some other prohibited drug; and

Third, the distribution took place in, on or within 1,000 feet of the property of San Francisco City Academy.

“Distribution” means delivery or transfer of possession of cocaine base in the form of crack cocaine to another person, with or without any financial interest in that transaction.

Comment: Ninth Circuit Model Jury Instruction 9.23.

JURY INSTRUCTION NO. 40

DUTY TO DELIBERATE

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Comment: Ninth Circuit Model Jury Instruction 7.1.

JURY INSTRUCTION NO. 41
CONSIDERATION OF EVIDENCE

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire

United States District Court
For the Northern District of California

1 trial process to start over. If any juror is exposed to any outside information, please notify the court
2 immediately.

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4 Comment: Ninth Circuit Model Jury Instruction 7.2.

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JURY INSTRUCTION NO. 42

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Comment: Ninth Circuit Model Jury Instruction 7.3.

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JURY INSTRUCTION NO. 43
JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

Comment: Ninth Circuit Model Jury Instruction 7.4.

The Defendant has objected to the inclusion of this instruction. Defendant has not provided any rationale behind his objection.

JURY INSTRUCTION NO. 44**VERDICT FORM**

A verdict form has been prepared for you. If and when you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the deputy courtroom clerk that you are ready to return to the courtroom.

Comment: Ninth Circuit Model Jury Instruction 7.5, as modified.

The government has proposed Ninth Circuit Model Jury Instruction 7.5. The Defendant has proposed an essentially identical instruction, with a one modification. Whereas the model instruction provides “After you have reached unanimous agreement on a verdict”, the Defendant’s proposed instruction reads “When and if you have reached unanimous agreement on a verdict” The Court will adopt the Defendant’s modification.

JURY INSTRUCTION NO. 45
COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Courtroom Clerk Betty Lee, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone-including me-how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

Comment: Ninth Circuit Model Jury Instruction 7.6.